



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/500,586

09/09/2004

Bum-Joon Kim

038779/280277

7698

826

7590

06/23/2009

ALSTON & BIRD LLP

BANK OF AMERICA PLAZA

101 SOUTH TRYON STREET, SUITE 4000

CHARLOTTE, NC 28280-4000

EXAMINER

SWARTZ, RODNEY P

ART UNIT

PAPER NUMBER

1645

MAIL DATE

DELIVERY MODE

06/23/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

1. Applicants' Response to Office Action, received 7 April 2009, is acknowledged. Claims 1, 2, 4, 5 and 8 have been amended.
2. Claims 1-5 and 8-16 are pending and under consideration.

Rejections Withdrawn

3. The rejection of claim 2 under 35 U.S.C. 112, second paragraph, as being indefinite for a polynucleotide "of an hsp 65 gene fragment", is withdrawn in light of the amendment of the claim.
4. The rejection of claim 4 under 35 U.S.C. 112, second paragraph, as being indefinite for as set of one, is withdrawn in light of the amendment of the claim.
5. The rejection of claims 1, 2, 5 and 8-14 under 35 U.S.C. 112, second paragraph, as being indefinite for size of fragment in claims, is withdrawn in light of the amendment of the claims.

Rejections Maintained

6. The rejection of claim 5 under 35 U.S.C. 112, second paragraph, as being indefinite for steps are involved in "analyzing" a nucleotide sequence, a set of one, and "infer a phylogenetic tree", is maintained.

As newly amended, the claim now is drawn to a method for the identification of mycobacterial species comprising the steps of: (1) amplifying an hsp 65 gene fragment of mycobacterial species of interest with primers wherein one primer consists of the nucleotide sequence of SEQ ID NO:55 and the other primer consists of the sequence of SEQ ID NO:56, (2) sequencing "a" nucleotide sequence of the amplified hsp 65 gene fragment; and (3) multi-aligning the nucleotide sequence of the amplified 65 gene fragment sequenced in step (2) with

Art Unit: 1645

at least one hsp 65 gene fragment selected from the group of polynucleotides consisting of SEQ ID NO:1 to SEQ ID NO:54 and polynucleotides complementary thereto.

It remains unclear how one identifies the particular mycobacterial species as there is no step that indicates how one distinguishes which species is present.

Also, as newly amended step (2) now recites "sequencing a nucleotide sequence of" the amplified hsp 65 gene fragment. Because of the open language "a nucleotide sequence of" instead of "the nucleotide sequence of", it is unclear how much of the amplified hsp 65 gene fragment is actually sequenced.

Claim Objections

7. Claim 1 is objected to because of the following informalities: there should be an "and" prior to "the size of" in the fourth line. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claim 8-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims depend from an objected claim 1.

Conclusion

9. Claim 5 and 8-15 are rejected. Claim 1 is objected to.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 1645

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Rodney P. Swartz, Ph.D., Art Unit 1645, whose telephone number is (571) 272-0865. The examiner can normally be reached on Monday through Wednesday from 9:00 AM to 7:30 PM EST. Thursday is the examiner's work at home day.

If attempts to reach the Examiner by telephone are unsuccessful, please contact the Examiner's Supervisor, Robert B. Mondesi (571)272-0956.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 10/500,586

Page 5

Art Unit: 1645

/Rodney P. Swartz, Ph.D./

Primary Examiner, Art Unit 1645

June 19, 2009